

within the vessel, the mouth or opening of the filter is generally oriented laterally (i.e., at an approximately right angle relative to the cannula) as shown in Figures 2, 3, 6, 7, 16, and 17 so that it can filter debris within the vessel. The generally lateral orientation is necessary in order to allow debris to enter the filter. It can be appreciated that if the filter was oriented proximally (i.e., toward the proximal end of the cannula), the filter opening would not be available to the blood stream and would not be able to filter debris, which would render the device non-functional.

The Examiner has suggested that a proximally opening mouth is depicted in Figures 6 and 8. Applicants respectfully disagree. Figure 6 clearly depicts that the filter with the opening pointing laterally relative to the cannula. Figure 8 appears to depict an alternative configuration for the filtering device that includes struts. However, the filter depicted in Figure 8 does not appear to show the mouth of the filter. Instead, column 6, lines 33-35 indicate that the filter shown in Figure 8 is merely an embodiment that can be attached to the cannula and shaft shown in Figure 6. Thus, both Figures 6 and 8 tend to show the filter oriented laterally relative to the cannula and shaft. In contrast, Applicants' emboli capturing device includes a proximally opening and oriented mouth as recited in claim 31 and shown throughout the figures. Thus, Applicants' claimed capturing device is structurally distinguishable from that of Maahs.

Applicants respectfully submit that this structural difference renders claim 31 patentable over Maahs. Because claims 32-36 depend from claim 31, they are allowable based on these remarks and because they add significant elements to distinguish them from the prior art. Applicants respectfully submit that these remarks overcome the rejection under 35 U.S.C. §102(b).

Claims 31-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 16, and 17 of U.S. Patent No. 6,001,118. Applicants respond to this rejection by enclosing herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). Applicants respectfully submit that the terminal disclaimer overcomes this rejection.

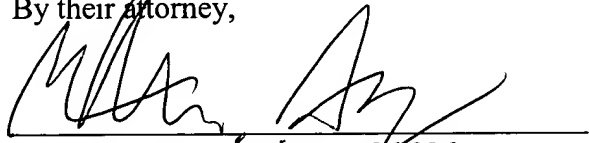
Reexamination and reconsideration are requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their attorney,

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